

(2019) 03 CAT CK 0110
In the Central Administrative Tribunal
Case No : Original Application No. 922 Of 2014

Kunal Nogia

APPELLANT

Vs

Union Of India Through Secretary

RESPONDENT

Date of Decision : 14-03-2019

Acts Referred:

Central Administrative Tribunal (Procedure) Rules, 1987 — Rule 15
Constitution Of India, 1950 — Article 14

Citation : (2019) 03 CAT CK 0110

Hon'ble Judges : Nita Chowdhury, J; S.N. Terdal, J

Bench : Division Bench

Advocate : N.K. Aggarwal

Final Decision : Dismissed

Judgement

Nita Chowdhury, J

1. By filing this OA, the applicant is seeking the following reliefs:-

"(A) It is respectfully prayed that this Hon?ble Tribunal may graciously direct the Respondents to grant the offer of the appointment to the applicant in the post of Assistant in the Grade pay of Rs.4600/- as stipulated for the post of Assistant.

(B) That this Hon?ble Tribunal may graciously be pleased to award costs and damages.

(D) Please call for records of the case.

G) Any other or further order or orders more than one nature as this Hon?ble Tribunal may feel deem fit and proper in the interests of justice."

2. On previous date of hearing, i.e., 12.3.2019, this Bench passed the said order:-

"Nobody appears for the applicant. Counsel for the respondents is heard as this is a very old mater of 2014 which has been listed 30 times previously. It is the

submission of the learned counsel for the respondents that the applicant had been selected for appointment but he did not avail of this offer because of which he could not be given the appointment. He relies upon the case of Kulwinder Pal Singh & Anr. in which the Hon'ble Supreme Court has held that the right to appointment, because the name of the applicant finds place in the select list, is not an indefeasible right to appointment as well. In this case, the applicant has neither given any application for extension of time nor were the respondents aware as to why the applicant did not come forward to complete the process of appointment. Hence, this OA filed at a later date will not revive his right to appointment. We give the last opportunity to the applicant to plead his case.

List the case on 14.03.2019 under the caption "PART HEARD MATTERS".

The OA filed by the applicant and the pleadings were perused.

3. Since there is no appearance on behalf of the applicant today also, we proceed to adjudicate this case by invoking the provisions of Rule 15 of the CAT (Procedure) Rules, 1987 and accordingly heard learned counsel for the respondents.

4. Counsel for the respondents by placing reliance on the judgment of the Hon'ble Supreme Court in the case of Kulwinder Pal Singh and another vs. State of Punjab and another, (2016) 6 SCC 532, submitted that merely because name of candidate finds place in select/merit list, it does not give him indefeasible right to appointment as well and it is always open to Government not to fill up vacancies. However, such decision should not be arbitrary or unreasonable and once decision is found to be based on valid reason, mandamus cannot be issued to fill up vacancies.

4.1 Counsel further submitted that applicant was one of the successful candidates of Central Secretariat Service (CSS) Combined Graduate Level Examination (CGLE) 2010 conducted by the Staff Selection Commission. He further submitted that pre-appointment formalities like enquiries into character and antecedents, medical examination etc. in respect of the applicant were initiated and the applicant was asked vide letter dated 21.3.2011 (Annexure A-1) to furnish by filling up and signing the attestation forms. The applicant duly filled up attestation forms on 23.3.2011 and as per the information provided by him in the said attestation form, he was found to be working in the Office of Principal Controller of Defence Accounts (PCDA), K. Kamraj Marg, G-Block, New Delhi as Auditor. Accordingly, the Office of PCDA was requested to provide the requisite documents relating to character and antecedents verification of the applicant and his medical fitness. These documents were received from the office of PCDA on 25.4.2011.

5. Counsel further submitted that successful candidates of CGLE 2010 recommended by SSC for appointment to Assistant's Grade were directed to undergo foundation training course in accordance with Central Secretariat Service Assistants' Grade (Direct Recruit Competitive Examination) Regulations,

2010. The applicant was also issued an offer of appointment on 4.11.2011, which was sent to him by Speed Post, with direction to report for undergoing the foundational course on 12.12.2011. The said letter issued to him was returned by the postal authorities undelivered with the remarks on envelop that the house was uninhabited. The applicant has never made any communication except on 4.6.2013, i.e., after one year and seven months of the issue of offer of appointment.

6. Counsel further submitted that as per the offer of appointment, the applicant was required to join on 12. 12.2011. Counsel further submitted that if the applicant was not able to join on that day, he could have made representation adducing his reasons for not joining, which request may be considered having regard to the reasons in his applicant but extension be granted not beyond the period of three months, however, in exceptional circumstances, extension may be granted upto a maximum period of six months and an offer of appointment would lapse automatically after the expiry of six months from the date of issue of the original offer of appointment, as per DOP&T OM dated 9.8.1995. Counsel further submitted that Hon?ble Delhi High Court in the matter of Ajay Kumar and others vs. UOI in WP(C) No.267/2013 had upheld the OM dated 9.8.1995 and had observed as under:-

"10. As far as the question of legality of the Office Memorandum dated 9.8.1995 goes, the respondents' arguments, in the opinion of the court, are merited and substantial. It goes without saying that every offer of appointment should be finite in point of time, more so, in case of a public appointment. The recruiting agency and the competent authority are duty bound to follow transparent selection processes consistent with the dictates of Article 14 of the Constitution of India which mean that vacancies for various posts should be advertised, the last date for entertaining applications clearly notified and the written test or other mode adopted for selection and notified well in advance. Once this stage is over, the result - in the form of a select list is again duly notified to the concerned candidates or publically. This is followed up by an offer of appointment to all successful candidates. The need to indicate a time within which or a date by which the candidate should report for duty needs to be hardly emphasized.....

11. This Court sees neither arbitrariness nor discrimination in regard to the stipulation of a fixed period within which a successful candidate has to report for duties to his post. As discussed previously, if discretion is allowed to individual appointing authorities, the resultant chaos would throw out of gear the entire process of filling up of vacancies and jeopardize the management of a cadre. Besides, each department or agency in the government would be clueless about the number of vacancies it possesses and indeed the number of successful candidates who are waiting in line to join at a given point of time. It is quite likely that a large number of posts would remain unmanned and unfilled awaiting individual predilections of selected candidates who would join according to their convenience. To avoid such anomalous and possibly disastrous eventualities, a

uniform approach was directed by the OM of 6.6.1978 as modified by the later Memorandum of 9.8.1995."

7. We have heard learned counsel for the respondents and carefully perused the material placed on record. We observe that applicant has himself stated in the OA that on 1. 11.2011, he was taken in custody by the Delhi Police, as according to him, his in-laws implicated him in a false case. He was released out from the judicial custody on 27.4.2013 and on 4.6.2013 he moved a representation to the respondents for appointment to the said post. The offer of appointment was issued to the applicant on 4.11.2011 and the same was sent by speed post but was returned undelivered by the postal department with the remarks on envelop that the house was unhabitated. The DOP&T OM dated 9.8.1995 on the issue involved in this case reads as under:-

"OFFICE MEMORANDUM

Subject: Candidates recommended by the UPSC/SSC for appointment to Central Civil Services and the post- delay in joining revival of offer of appointment after their cancellation - determination of seniority.

The undersigned is directed to say that according to DP & T O.M.No.9/23/71-Estt. (D) dated 6.6.78 (copy enclosed) an offer of appointment issued by different Ministries/Departments, should clearly indicate that the offer would lapse if the candidate did not join within the specified period which shall not exceed two or three months. If, however, within the period stipulated, a request is received from candidates for extension of time, it may be considered by the Ministries/Departments and if they are satisfied, an extension for a limited period may be granted but the total period granted including the extension during which the offer of appointment will be kept open, should not exceed a period of nine months.

2. The Staff Side of the Departmental Council (JCM) of DOP&T have demanded that direct recruits may be allowed a maximum of three months for joining instead of nine months provided for in the O.M. under reference so as to avoid delay in preparation and issue of select/seniority list. The matter has been examined in consultation with the UPSC and it has been decided to reduce from nine months to six months the maximum time upto which an offer of appointment can be kept to open. In other words, an offer of appointment should clearly specify the period (which shall not normally exceed one or two months) after which the offer would lapse automatically if the candidate did not join within the specified period. If however, within the specified period, a request is received from the candidate for extension of time, it may be considered by the Ministries/Departments but extension beyond three months should not be granted liberally and it may be granted only as an exception where facts and circumstances so warrant and in any case only upto a maximum of six months from the date of issue of the original offer of a appointment. An offer of appointment would lapse automatically after the expiry of six months from the

date of issue of the original offer of appointment. 3. Subject to the above modifications the other provisions contained in the OM dated 6.6.78 should be followed scrupulously."

From the aforesaid OM, it is evidently clear that offer of appointment would lapse automatically after the expiry of six months from the date of issue of the original offer of appointment. It is not the case of the applicant that he was not aware about his selection as having been selected, he was asked to complete all pre-appointment formalities as attestation forms and antecedents verification vide letter dated 21.3.2011 which he has completed. However, admittedly on 1.11.2011 he was taken into custody by the Delhi Police and the said offer of appointment dated 4.11.2011 sent to him by speed post, which was returned with the aforementioned remarks. The applicant has made representation only on 4.6.2013 seeking appointment to the said post despite the fact that he was aware that codal formalities as required were completed by him in 2011 and no efforts were made by the applicant to make enquiry about his offer of appointment to the said post. The reason is obvious that rightly or wrongly he was taken into judicial custody on 1.11.2011 and remained as such till 27.4.2013. It is pertinent to mention that since extension of time for joining even in exception circumstances is restricted to a maximum period of six months and the fact that the offer of appointment was issued on 4.11.2011 and request for joining was made on 4.6.2013. On the direction of this Tribunal vide order dated 28.10.2016, respondents have filed their relevant response pertaining to a decision taken by the respondent in respect of the vacancy against which the name of the applicant was recommended by the SSC and the candidature of the applicant was cancelled, the relevant portion of the same reads as under:-

"2. In the offer of appointment issued to recommended candidates of CGLE, 2010 which provided inter alia that if recommended candidates accept the offer of appointment then they were required to report for foundational course on 12.12.2011 at ISTM, New Delhi. Despite this instructions, some candidates of CGLE, 2010 did not report for foundational course on 12.12.2011 at ISTM, New Delhi.

It was a general practice for not cancelling the candidature of CGLE, 2010 who did not accept offer of appointment and not joined in the foundational course. The process of assessing not joined? candidates continued till August, 2013 and thereafter the vacancies which arose due to shortfall in nomination and also due to non-joining of candidates of CGLE, 2010 were included in the vacancies reported to SSC for CGLE, 2013.

3. Though the vacancies of CGLE, 2010 were included for CGLE, 2013 in August, 2013, individual cancellation of candidature of any of the ?non joined? candidates of CGLE, 2010 including Shri Kunal Nogia has not been done but vacancies were included in the vacancies reported to SSC for the CGEL, 2013 taking into account existing vacancies as on 1.7.2013 i.e. sanctioned strength in ASO grade minus regular officers including ad hoc Section Officers. Copies of calculation of

vacancies for CGLE, 2013 are enclosed. Thus, the vacancies occurred due to non joining of candidates of CGLE, 2010 including the applicant were deemed as cancelled."

Along with the aforesaid response, the respondents have also annexed the copy of calculation of vacancies for CGLE, 2013. We have also perused the same. It is relevant to mention that in similar circumstances, the Hon?ble High Court of Delhi in the case of Ajay Kumar vs UOI in WP(C) 267/2013 vide Order dated 16.1.2.2013 observed as under:-

12. Although the above observations are dispositive of the present case, the Court also notices that the petitioner approached the respondents with a representation after his appointment lapsed, for the first time, on 15.9.2010; he appears to have made repeated representations and finally elicited their response in 2011. During the hearing, his counsel urged with certain vehemence that in terms of the OM dated 28. 8.1997, the petitioner could still be accommodated in a later training batch. This Court is of the opinion that such submission is based on the misreading of the OM dated 28.8.1997. It does not and cannot be read as permitting something which is contrary to the OM of 6.6.1978; the allusion to those who report after four weeks clearly means those who report within the overall period of six months or at worst those whose lapsed appointments are allowed to be revived on the ground of their falling within the "exceptional" category in "public interest". It was not - and perhaps justifiably so - the petitioner's case that his is an exceptional case; certainly, we see no elements of public interest, underlining his claim for being accommodated in a subsequent batch.

13. For the forgoing reasons, the Court is of the opinion that the petition lacks merit; it is accordingly dismissed with no order as to costs.

8. In view of the above facts and circumstances of this case and for the foregoing reasons, we do not find any of the grounds raised by the applicant in the OA is sufficient to entertain his request for direction to the respondents to grant him offer of appointment to the post of Assistant, which had already expired by efflux of time. Accordingly, we dismiss this OA being devoid of merit. There shall be no order as to costs.